IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

Crl.MC.No. 2013 of 2005()

[CRIME NO.90/2004 OF BEKAL POLICE STATION]

PETITIONER/ACCUSED:

YEROL MOHANAN VAIDYAR,
AGED 48 YEARS, S/O.LATE KUNHIKANNAN VAIDYAR,
KRISHNA NILAYAM, P.O.PANAYAT, VIA BEKAL,
KASARGOD DISTRICT.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE,
HOSDURG.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2013 of 2005

Dated this the 21st day of December 2006

O R D E R

Against the petitioner, an F.I.R has been registered on the basis of a complaint lodged by one Jayakrishnan. The crux of the allegation in that complaint, a copy of which is produced as Annexure 1, is that the petitioner had induced the defacto complainant on the basis of a false representation to part with an amount of Rs.1,58,000/-. He was induced to believe on the basis of the false representations that a job in the Merchant Navy shall be secured for him if an amount of Rs.1,58,000/- were paid. It is the case of the defacto complainant that such representations were falsely made to fraudulently induce the defacto complainant to part with the amount and with no serious intention of abiding by the promise. The F.I.R was registered. Investigation had commenced. The petitioner has already been enlarged on bail, it is submitted. It is, at that stage, that the petitioner has come to this court with this prayer for quashing of the investigation initiated against him. There was an order of stay and the final report has not been filed yet.

2. The petitioner prays that the investigation which has commenced against him may be quashed. The F.I.R, Annexure 1 may be quashed and all the further proceedings arising there from may also be quashed by invoking the powers under Section 482 Cr.P.C, it is prayed.

3. The plank of attack is that the allegations are false. The next contention is based on Annexures 2 and 3. They are pressed into service to show that the defacto complainant had no allegations against the petitioner herein in Annexure 2. Annexure 3 shows that there was a settlement between the defacto complainant and others. The petitioner was not even shown as a party to that settlement. He figures only as a witness in Annexure 3 which is described as a declaration of settlement.

4. The defacto complainant has not been made a party. The truth or falsity of the allegations raised cannot be determined at this stage by this court on the available inputs. Annexures 2 and 3 are not original documents or even authenticated copies. In these circumstances, no relief can also be granted on the basis of Annexures 2 and 3. The defacto complainant has not even arrayed as a respondent.

5. I am, in these circumstances, satisfied that the disputed questions of fact cannot be resolved in their proceedings under Section 482 Cr.P.C. It is impossible to come to the conclusion that the allegations raised, even if accepted, would not reveal the offence punishable under Section 420 I.P.C. The petitioner has already been enlarged on bail and I find no prejudice, loss or inconvenience much less miscarriage or denial of justice resulting from the further progress of the investigation. I have no reason also to assume that the investigators will not conduct a proper, correct and honest investigation to anert the relevant facts.

6. I am, in these circumstances, satisfied that this Criminal Miscellaneous Case is without merit and the same deserves to be dismissed. The petitioner, having already been enlarged on bail, I find no reason to issue any further directions in the interests of justice.

7. In the result, this Criminal Miscellaneous Case is dismissed. I may hasten to observe that the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to raise any appropriate contentions at the later

stages of investigation/trial. His option of challenging the final report which may be filed against him or of claiming discharge/acquittal in the event of cognizance being taken will remain unfettered by the dismissal of this Criminal Miscellaneous Case.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006